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1 Plaintiff, Executive Lens LLC (“Plaintiff”), files this First Amended Complaint  
 2 against Lee Rapkin (“Attorney Rapkin”) and John Doe d/b/a “the Exposer” (the “Exposer”)  
 3 who operates the 1a Audits Exposé YouTube channel located at  
 4 [www.youtube.com/@1aAuditsExposé](http://www.youtube.com/@1aAuditsExposé) (The “Exposé Channel”) and alleges as follows:

5 **INTRODUCTION**

6 1. This action concerns the misuse of the Digital Millennium Copyright Act’s  
 7 (“DMCA”) counter-notice process by individuals, including attorneys, to maintain  
 8 monetized videos on YouTube notwithstanding the absence of lawful fair use.

9 2. Over the past several years, a growing number of YouTube channels have  
 10 been built on the unauthorized use of copyrighted footage created by others. These  
 11 channels repost substantial portions of original works without permission, add little or no  
 12 meaningful transformation, and monetize the resulting videos through YouTube’s Partner  
 13 Program while invoking “fair use” as justification.

14 3. While some reaction-style videos may qualify as fair use, courts have  
 15 emphasized that such works must include genuine critique, frequent and substantive  
 16 commentary, and a transformative purpose.

17 4. When copyright owners such as Plaintiff submit takedown notices under 17  
 18 U.S.C. § 512(c), infringing channels often respond by filing counter-notices under §  
 19 512(g), swearing under penalty of perjury that the removed material was taken down as a  
 20 result of “mistake or misidentification” and that the use is protected by fair use.

21 5. Many such counter-notices are submitted without a reasonable factual or legal  
 22 basis. They are often filed without a meaningful review of the videos at issue, without  
 23 application of the statutory fair-use factors, or with the expectation that the copyright owner  
 24 will be deterred from pursuing litigation.

25 6. In practice, invoking “fair use” in a counter-notice triggers YouTube’s  
 26 automated reinstatement process under 17 U.S.C. § 512(g), even where the asserted basis  
 27 for fair use is inaccurate or unsupported, unless the copyright owner initiates federal  
 28 litigation within the statutory waiting period.

1       7. As a result, anonymous channel operators increasingly enlist attorneys to  
 2 submit counter-notices on their behalf using standardized or boilerplate language to invoke  
 3 fair use, while avoiding identification by failing to comply with the disclosure requirements  
 4 of 17 U.S.C. § 512(g)(3)(D). YouTube's automated counter-notice system does not  
 5 independently cross-reference the channel owner against the information submitted in the  
 6 counter-notice, permitting anonymity to be maintained notwithstanding noncompliance  
 7 with the statute.

8       8. In this case, Attorney Rapkin, an attorney admitted to practice in Quebec and  
 9 employed by BLP Avocats in Montréal, submitted a blanket counter-notice on behalf of an  
 10 anonymous client operating the Exposé Channel. The counter-notice covered seventeen  
 11 videos: sixteen YouTube Shorts and one long-form video (the “17-Videos”).

12       9. In the counter-notice, Rapkin certified under penalty of perjury that each of  
 13 the 17-Videos had been “significantly transformed by detailed editing and elaborate  
 14 commentary throughout the videos.”

15       10. That certification was materially false. At least eight of the videos contain no  
 16 commentary whatsoever. The remaining videos consist primarily of Plaintiff's original  
 17 footage with minimal or token additions, including unrelated clips from television shows  
 18 or movies that serve only to mock the subject and do not transform the underlying work.  
 19 None of the 17-Videos contains anything resembling “elaborate commentary throughout.”

20       11. For avoidance of doubt, Plaintiff does not contend that the mere inclusion of  
 21 unrelated audiovisual clips, images, sound effects, or pop-culture references constitutes  
 22 “commentary” for purposes of fair use or for purposes of sworn certification made in the  
 23 counter-notice. None of those elements involve analysis, critique, explanation, or  
 24 engagement with the substance of the 17-Videos. The sworn representation that each video  
 25 contained “elaborate commentary throughout” was therefore false as a factual matter, not  
 26 merely debatable as a matter of opinion or degree.

27       12. Rapkin submitted the same standardized justification across all seventeen  
 28 takedown disputes, notwithstanding the significant factual differences among the 17-

Videos. This reflects a deliberate course of conduct designed to preserve monetized content while avoiding identification of the actual channel operator.

13. Consistent with that scheme, the Exposer publicly boasted about hiding behind Attorney Rapkin and a purported corporate entity to evade accountability, taunting Plaintiff that his identity would never be discovered and he therefore could not be held liable. Upon information and belief, those representations were false, and no bona fide corporation owned or operates the *Exposé* Channel.

14. This action seeks to identify the anonymous operator of the Exposé Channel, hold Defendants accountable for material misrepresentations made in the counter-notice, and prevent reinstatement of the 17-Videos pursuant to 17 U.S.C. § 512(g).

## **JURISDICTION AND VENUE**

15. This action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and includes a claim for Declaratory Relief under 28 U.S.C. § 2201.

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

17. Attorney Rapkin consented to jurisdiction in the Northern District of California pursuant to 17 U.S.C. § 512(g)(3)(D) by submitting a DMCA counter-notification to YouTube. She did so knowingly, using her law firm email and digital signature. Her consent binds her to this forum regardless of her location or bar admission status. Plaintiff notes that such consent is a statutory prerequisite for a valid counter-notification under § 512(g).

18. The Exposer likewise consented to jurisdiction in this District under 17 U.S.C. § 512(g)(3)(D) by submitting the counter-notice to YouTube.

19. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1400(a) because both Attorney Rapkin and the Exposer consented to jurisdiction in this District under 17 U.S.C. § 512(g)(3)(D).

11

11

## **PARTIES**

20. Plaintiff is a Colorado limited liability company and the sole owner of the copyrights in the videos published on the YouTube channels “Denver Metro Audits” and “Denver Metro Audits 2.0” (@DenverMetroAudits; @Denvermetroaudits2.0).

21. Attorney Rapkin is an attorney admitted to the Quebec bar. Attorney Rapkin submitted a DMCA counter-notice in the course and scope of her employment with the Canadian law firm BLP Avocats, using her firm email and contact information. Plaintiff reserves the right to name BLP Avocats as a defendant after further discovery.

22. Defendant John Doe, operating under the alias “The Exposer,” runs a YouTube channel located at @1aAuditsExposé.

23. The Exposer's YouTube channel is a textbook example of an anonymous "reaction" channel, that is, a channel that creates no original content of its own, but instead lifts copyrighted footage from others, overlays superficial or token commentary (if any), and attempts to pass it off as transformative. The Exposer never appears on camera, and until recently, his location was completely unknown.

24. The Exposer claims that his channel exists to “expose the graft” of First Amendment auditors (“Auditors”). In reality, the channel monetizes stolen footage from those very same Auditors, ironically engaging in the exact behavior it purports to criticize. It is not journalism. It is not commentary. It is copyright infringement disguised as fair use, wrapped in a mask of moral outrage.

## **FACTUAL ALLEGATIONS**

25. YouTube is the largest video-sharing platform in the world and operates under the framework established by the DMCA.

26. The DMCA provides a process by which copyright owners may request the removal of infringing content through a notice-and-takedown mechanism. If the platform receives a valid takedown notice, it typically disables access to the allegedly infringing material.

27. The DMCA also allows the alleged infringer to submit a counter-notice

1 claiming that the use is authorized, lawful, or otherwise non-infringing. If the copyright  
 2 owner does not initiate a federal lawsuit within 10 business days of receiving a counter-  
 3 notice, YouTube is required by law to restore access to the disputed content pursuant to 17  
 4 U.S.C. § 512(g).

5 28. This statutory framework places the burden on copyright owners, particularly  
 6 small independent creators and small publishers, to enforce their rights through litigation.

7 29. Infringers like the Exposer exploit this imbalance by targeting small creators  
 8 who lack the resources to initiate a lawsuit after receiving a counter-notice.

9 30. In practice, this loophole allows anonymous, foreign-run, monetized  
 10 YouTube channels to exploit copyrighted material created in the United States by invoking  
 11 “fair use” without consequence or oversight.

12 31. In recent years, “fair use” has become a catchall defense on YouTube, used  
 13 not to support legitimate critique, but to excuse the wholesale misappropriation of others’  
 14 creative work.

15 32. The Auditor community on YouTube consists of small independent content  
 16 creators who film interactions with government officials in public spaces to promote  
 17 transparency and assert constitutional rights, primarily the First Amendment. These  
 18 creators act as citizen journalists, watchdogs, and public advocates, documenting real-time  
 19 government conduct and holding public officials accountable through video.

20 33. The Auditor movement has grown into a powerful and controversial force on  
 21 social media. Auditors regularly publish their videos to YouTube channels, where they  
 22 have collectively attracted millions of subscribers and billions of views. These creators  
 23 often operate under channel names or aliases and have become recognizable figures in the  
 24 digital civil rights ecosystem.

25 34. Plaintiff owns all copyrights to the videos uploaded to the YouTube channel  
 26 Denver Metro Audits and related channels, which collectively have over 250,000  
 27 subscribers and more than 600 videos. The works have generated over 115 million views  
 28 and sustained public engagement on issues of constitutional importance.

1       35. A genre of YouTube creators known as “auditor trolls” has emerged in  
2 response. These creators produce reaction-style videos targeting Auditors. While they  
3 purport to offer criticism or commentary, their actual content typically consists of mockery,  
4 personal insults, and superficial narration that does not engage with the substance of the  
5 original videos. Their focus is ridicule, not critique.

6       36. The Exposer’s YouTube channel is an example of such misuse. It provides no  
7 new message, no added insight, and no transformation of purpose. It simply repackages  
8 Plaintiff’s footage with ridicule to attract viewers and generate revenue from Plaintiff’s  
9 content. The Exposer creates no original content. He steals it and splices it together for ad  
10 revenue.

11       37. These additions rarely engage with the subject matter or journalistic value of  
12 Plaintiff’s works. Instead, the Exposer mocks Auditors personally, their voices,  
13 mannerisms, appearances, emotional reactions, and private lives.

14       38. Plaintiff clarifies that while parody or mockery *can* be fair use, the mere  
15 mashup of unrelated, third-party copyrighted clips does not constitute commentary on the  
16 Plaintiff’s work.

17       39. The Exposer has created at least 31 videos using Plaintiff’s copyrighted  
18 footage: 19 YouTube Shorts and 12 long-form videos.

19       40. On July 4, 2025, Plaintiff’s assignor filed DMCA takedown notices with  
20 YouTube requesting removal of 27 of the 31 videos (16 Shorts and 11 long-form videos).

21       41. YouTube complied and removed all 16 Shorts and one long-form video. The  
22 Exposer subsequently made the other 10 long videos and 3 Shorts private after receiving  
23 the strikes. A list of URLs for the 16 Shorts and 1 long video that were removed by  
24 YouTube is attached as **Exhibit A**.

25       42. Despite repeated communications, YouTube refused to remove the 10 long-  
26 form videos that had been made private. YouTube appears to have determined, possibly  
27 via an automated process, that these videos were protected under fair use. This  
28 determination was made outside the DMCA safe-harbor and without judicial input. It is

1 not the role of anonymous YouTube staff to resolve the legal question of fair use under  
 2 U.S. copyright law.

3 **The Counter-Notice Triggered Restoration of the 17-Videos**

4 43. On July 14, 2025, Attorney Rapkin submitted a blanket DMCA counter-notice  
 5 on behalf of the Exposer covering all 17-Videos (16 Shorts and 1 long-form). (the  
 6 “Counter-Notice”). A copy of the Counter-Notice is attached hereto as **Exhibit B**.<sup>1</sup>  
 7 Attorney Rapkin submitted the Counter-Notice as the Exposer’s agent and co-participant  
 8 in the copyright infringement scheme.

9 44. In the Counter-Notice, Attorney Rapkin swore under penalty of perjury that  
 10 the videos were removed “by mistake or misidentification” and that each was “significantly  
 11 transformed by detailed editing and elaborate commentary throughout.” These assertions  
 12 were materially false.

13 45. The systematic nature of Attorney Rapkin’s misrepresentation, applying an  
 14 identical fair use justification to 17 videos with varying levels of transformation (ranging  
 15 from zero commentary to token clips), constitutes a reckless disregard for the truth. This  
 16 was not a legal error or a subjective mistake regarding the nuances of fair use; it was a bad-  
 17 faith administrative maneuver. Attorney Rapkin’s failure to conduct a video-by-video  
 18 review before signing a sworn declaration proves that her certification of elaborate  
 19 commentary was made with the knowledge that the statement was not, and could not be,  
 20 true for the entire set of videos.

21 46. Rather than engaging in a legitimate fair use analysis, Attorney Rapkin  
 22 engaged in perjury. By providing a single, blanket justification for 17 separate works,  
 23 Attorney Rapkin sought to exploit YouTube’s automated systems. This blanket approach  
 24 is evidence of a knowing misrepresentation under § 512(f), as no reasonable person, let  
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26 27 28 <sup>1</sup> Although the Counter-Notice purports to cover the URLs for 17 videos, only 16 URLs were listed on  
 the Counter-Notice. Attorney Rapkin did not include the following URL in the Counter-Notice:  
[https://youtube.com/shorts/Hj-0PFw-l-g?si=unQyL7iIWj\\_OVQhs](https://youtube.com/shorts/Hj-0PFw-l-g?si=unQyL7iIWj_OVQhs).

1 alone a licensed attorney, could truthfully swear that a video with zero commentary  
 2 contains elaborate commentary throughout. Her intent was not to provide an accurate  
 3 counter-notice, but to force a mass reinstatement of infringing content through deception.

4 47. The Counter-Notice also failed to identify the subscriber who posted the  
 5 videos, as required by 17 U.S.C. § 512(g)(3)(D).

6 48. Upon receipt of the Counter-Notice, YouTube relied on Attorney Rapkin's  
 7 sworn representations by initiating the statutory reinstatement process mandated by 17  
 8 U.S.C. § 512(g), including placing the 17-Videos on a restoration track and issuing formal  
 9 notice that reinstatement would occur absent federal litigation. YouTube's initiation of this  
 10 process constituted reliance on the Counter-Notice within the meaning of § 512(f), and  
 11 directly caused Plaintiff to incur damages in the form of emergency litigation costs  
 12 necessary to prevent reinstatement.

13 49. Upon receipt of the Counter-Notice, YouTube notified Plaintiff that the  
 14 Counter-Notice was a legal request for reinstatement of the 17-Videos and that, unless  
 15 Plaintiff provided evidence that it had commenced legal action against the Exposer within  
 16 ten (10) business days, the removed videos may be reinstated to YouTube.

17 50. YouTube further instructed Plaintiff that the only means of preventing  
 18 reinstatement was to initiate legal action against the Exposer and provide YouTube with  
 19 evidence of that action within the statutory waiting period.

20 51. As a direct result of the Counter-Notice submitted by Attorney Rapkin, the  
 21 17-Videos identified therein were placed on a restoration track and were scheduled to be  
 22 reinstated absent judicial intervention.

23 52. Plaintiff commenced this action and provided notice to YouTube in order to  
 24 prevent reinstatement of the videos and to mitigate the harm caused by the false and  
 25 misleading representations made in the Counter-Notice.

26 53. The restoration of the 17-Videos, or the imminent and automatic reinstatement  
 27 process triggered by the Counter-Notice, caused Plaintiff to incur legal fees, enforcement  
 28 costs, and other damages, and constitutes actionable injury under 17 U.S.C. § 512(f).

1       54. As a direct result of the false Counter-Notice, Plaintiff was forced to initiate  
 2 this federal litigation within the strict 10–14 day statutory window under § 512(g)(2)(C) to  
 3 prevent the automated restoration of the infringing content. The damages incurred under §  
 4 512(f) include the attorneys' fees and costs necessitated by this filing, which was the only  
 5 mechanism available to prevent the reliance on Attorney Rapkin's misrepresentations from  
 6 resulting in the physical replacement of the 17-Videos. To hold that restoration must be  
 7 complete before a claim is ripe would perversely reward Defendants for successful  
 8 misrepresentations that force immediate, costly legal intervention.

9 **The Counter-Notice Contained Material Misrepresentations**

10       55. In the Counter-Notice, Attorney Rapkin asserted under penalty of perjury that  
 11 the 17-Videos were removed “by mistake or misidentification” and that each was  
 12 “significantly transformed by detailed editing and elaborate commentary throughout.”  
 13 These assertions were materially false.

14       56. Upon information and belief, Attorney Rapkin did not view or review each of  
 15 the 17-Videos before submitting the Counter-Notice. Had she done so, she would have  
 16 known that at least eight videos contained no commentary of any kind, rendering her sworn  
 17 statement that each video contained “elaborate commentary throughout” factually  
 18 impossible.

19       57. In reality, the 16 counter-noticed Shorts fall into three categories, none of  
 20 which support a fair use defense:

21       58. **Category 1: Short Videos with No Commentary Whatsoever (8 videos):**  
 22 These Shorts consist entirely of Plaintiff's copyrighted footage, often paired with other  
 23 copyrighted material (e.g., movie or television clips) for mockery. There is not a single  
 24 word of narration, commentary, or critique in these videos, directly contradicting Rapkin's  
 25 blanket claim under penalties of perjury of “elaborate commentary throughout.”

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1       59. **Category 2: Short Videos Featuring Publicly Available Government**

2       **Footage (3 videos)**<sup>2</sup>: These clips depict public meetings or hearings that were already  
 3 published by government entities on their official YouTube channels such as the City of  
 4 Englewood, Colorado. Rather than using those public sources, the Exposer copied  
 5 Plaintiff's original curated footage for convenience, better audio/video quality, or camera  
 6 angles, none of which justify appropriation under fair use.

7       60. **Category 3: Videos with Trivial or Token Commentary (6 videos)**: These

8 include brief and meaningless phrases or sarcastic clips from copyrighted movies and TV  
 9 shows. None of these qualify as "elaborate commentary throughout," the phrase Rapkin  
 10 certified under penalty of perjury in the Blanket Counter-Notice.

11       61. The one long-form video at issue contains substantial portions of Plaintiff's  
 12 footage along with at least 14 copyrighted clips or images from TV shows such as *Ren &*  
 13 *Stimpy*, *Futurama*, *The Simpsons*, *The Office*, and *Extra*.

14       62. Despite these clear deficiencies, Attorney Rapkin submitted the blanket  
 15 Counter-Notice declaring that all 17-Videos were "significantly transformed by detailed  
 16 editing and elaborate commentary throughout."

17       63. As alleged above, that statement was knowingly false.

18       64. Attorney Rapkin's certification was not a good-faith mistake regarding a  
 19 debatable legal theory; it was a material misrepresentation of the nature of the edits. By  
 20 labeling a video made up of stolen IP as elaborate commentary, Defendants sought to  
 21 deceive YouTube into bypassing its manual review process.

22       65. The Counter-Notice was part of a coordinated scheme to preserve monetized  
 23 infringing content while concealing the identity of the true channel operator. Attorney  
 24 Rapkin acted as a proxy or agent, with no firsthand knowledge sufficient to make the sworn  
 25 statements required by 17 U.S.C. § 512(g).

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<sup>2</sup> One Short Video falls into Categories 1 and 2 as it has no commentary and public domain footage was  
 available

1 **Attorney Rapkin's Continuing Concealment Confirms Knowing and Material**  
 2 **Misrepresentation**

3       66. As required by 17 U.S.C. § 512(g)(3)(D), a valid DMCA counter-notice must  
 4 include “the subscriber’s name, address, and telephone number.” The Counter-Notice  
 5 submitted by Attorney Rapkin did not identify the subscriber who owns or controls the  
 6 Exposé Channel. Instead, Attorney Rapkin substituted her own contact information,  
 7 thereby concealing the identity of the Exposer.

8       67. The omission of the Exposer’s identifying information was material. By  
 9 withholding his name and address, the Counter-Notice frustrated Plaintiff’s ability to  
 10 identify, serve, and pursue the actual infringer, and directly caused Plaintiff to incur  
 11 attorney’s fees and related costs in attempting to uncover the Exposer’s identity. To date,  
 12 the Exposer’s identity remains unknown to Plaintiff.

13       68. After this action was commenced, Attorney Rapkin continued to withhold the  
 14 identity of the Exposer. In her Rule 26(a)(1) disclosures, Rapkin identified “John Doe d/b/a  
 15 ‘The Exposer’” as an individual with discoverable information central to the defenses in  
 16 this case, yet refused to disclose that individual’s name, physical address, or contact  
 17 information.

18       69. Attorney Rapkin’s ongoing refusal to identify the subscriber was not  
 19 inadvertent. It occurred after Plaintiff specifically sought the subscriber’s identity, after  
 20 litigation had commenced, and after Attorney Rapkin had acknowledged that the subscriber  
 21 was the person who posted the videos at issue and possessed discoverable information  
 22 regarding the Counter-Notice.

23       70. This continuing concealment is consistent with, and confirms, the knowing  
 24 and material misrepresentations made in the Counter-Notice itself. By certifying under  
 25 penalty of perjury that each of the 17-Videos was “significantly transformed by detailed  
 26 editing and elaborate commentary throughout,” while simultaneously withholding the  
 27 subscriber’s identity, Rapkin acted to preserve the effects of the false Counter-Notice and  
 28 to delay or prevent judicial review of its accuracy.

1       71. Attorney Rapkin's conduct before and after the submission of the Counter-  
 2 Notice demonstrates that the misrepresentations were not the product of mistake or  
 3 negligence, but part of a deliberate course of conduct designed to maintain anonymity,  
 4 frustrate enforcement of Plaintiff's copyrights, and prolong the effects of the false Counter-  
 5 Notice.

6       72. At a minimum, Attorney Rapkin acted with reckless disregard for the truth of  
 7 the statements made in the Counter-Notice. As an attorney submitting a sworn certification  
 8 under penalty of perjury, Attorney Rapkin was required to exercise reasonable care and  
 9 diligence to ensure that the representations made were accurate.

10      73. Attorney Rapkin failed to exercise reasonable care by submitting a blanket  
 11 Counter-Notice asserting that each of the identified videos was "significantly transformed  
 12 by detailed editing and elaborate commentary throughout," despite the fact that multiple  
 13 videos contained no commentary at all and no plausible basis for a claim of mistake or  
 14 misidentification.

15      74. Had Attorney Rapkin acted with reasonable care or in good faith, she would  
 16 have had no substantial doubt that at least some of the counter-noticed videos could not  
 17 satisfy the representations made in the counter-notification. Her decision to certify those  
 18 statements anyway constitutes knowing and material misrepresentation within the meaning  
 19 of 17 U.S.C. § 512(f).

20      75. Attorney Rapkin's continued refusal to identify the subscriber who posted the  
 21 videos further confirms that the misrepresentations were not inadvertent, but the result of  
 22 willful blindness or reckless disregard for the truth.

23 **Attorney Rapkin Acted as a Procedural Proxy Rather Than Independent Counsel**

24      76. Attorney Rapkin submitted the Counter-Notice as purported legal counsel for  
 25 the Exposé Channel yet declined to identify the person who owned or controlled that  
 26 YouTube channel, even after litigation commenced and after acknowledging that the  
 27 subscriber possessed discoverable information central to the defenses asserted.

1       77. Attorney Rapkin's conduct is inconsistent with the role of independent legal  
2 counsel exercising professional judgment regarding the accuracy of sworn statements  
3 submitted under penalty of perjury. Rather than evaluating the individual videos identified  
4 in the Counter-Notice, Attorney Rapkin submitted standardized and conclusory "fair use"  
5 assertions across numerous non-homogeneous videos, including videos containing no  
6 commentary at all.

7       78. The Counter-Notice relied almost exclusively on formulaic language invoking  
8 "fair use," "commentary," and "parody," mirroring the precise terminology required to  
9 trigger YouTube's automated reinstatement process, and requesting restoration of the 17-  
10 Videos absent judicial review.

11       79. Rapkin's refusal to identify the subscriber, combined with her blanket  
12 certification of fair use and immediate demand for reinstatement, supports a reasonable  
13 inference that the Counter-Notice was submitted for the limited purpose of restoring the  
14 videos through YouTube's statutory mechanism, rather than to correct a genuine mistake  
15 or misidentification.

16       80. At a minimum, Attorney Rapkin acted with reckless disregard for the truth by  
17 serving as a procedural intermediary to invoke the counter-notice process without  
18 exercising reasonable care to verify the factual accuracy of the representations made on  
19 behalf of the owner of the Exposé Channel.

20       81. Attorney Rapkin lacked any apparent basis to certify the fair use status of the  
21 17-Videos without reviewing them, particularly given the technical and fact-intensive  
22 nature of U.S. copyright fair use analysis.

23       82. Plaintiff now seeks damages, attorneys' fees, declaratory and injunctive relief  
24 for Defendants' material misrepresentations in the Counter-Notice submitted to YouTube.

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## **FIRST CAUSE OF ACTION**

## Misrepresentation in Counter-Notifications under the DMCA

(17 U.S.C. § 512(f))

## **(Against Attorney Rapkin and the Exposer)**

83. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 82.

7       84. Section 512(f)(2) of the Copyright Act provides, in relevant part, that “any  
8 person who knowingly materially misrepresents under this section . . . that material was  
9 removed or disabled by mistake or misidentification, shall be liable for any damages,  
10 including costs and attorneys’ fees, incurred by the alleged infringer, by any copyright  
11 owner...who is injured by such misrepresentation...” (emphasis added).

12        85. The Counter-Notice submitted by Attorney Rapkin and the Exposer was false,  
13 and knowingly so at the time it was filed. Attorney Rapkin falsely represented, under  
14 penalty of perjury: (1) that each of the 17-Videos “was significantly transformed by  
15 detailed editing and elaborate commentary throughout”; and  
16 (2) that each video was protected by fair use and removed “due to a mistake or  
17 misidentification.” These statements were materially false. At least eight of the Videos  
18 contain no commentary whatsoever, and none was transformed by detailed editing or any  
19 meaningful interjection.

20        86. Attorney Rapkin made these knowingly false statements in an effort to  
21 preserve or re-monetize the 17-Videos on the Exposé Channel.

22       87. Plaintiff does not allege that Attorney Rapkin violated § 512(f) merely by  
23 advancing an incorrect or debatable legal interpretation of fair use. Rather, Plaintiff alleges  
24 that Attorney Rapkin knowingly misrepresented objective, verifiable facts about the  
25 content of the 17-Videos themselves. Specifically, that the contained “elaborate  
26 commentary throughout,” when multiple videos contained none.

27       88. Attorney Rapkin's subsequent refusal to identify the subscriber who operates  
28 the Exposé Channel further confirms that the misrepresentations were knowing and

1 material, and not the result of inadvertence or good-faith mistake.

2 89. Attorney Rapkin knowingly and materially misrepresented that the 17-Videos  
 3 were removed due to mistake or misidentification. At a minimum, Attorney Rapkin acted  
 4 with reckless disregard for the truth and failed to exercise reasonable care or diligence,  
 5 such that she would have had no substantial doubt as to the falsity of the representations  
 6 had she acted in good faith.

7 90. Attorney Rapkin's misrepresentations caused YouTube to initiate the  
 8 statutory reinstatement process under 17 U.S.C. § 512(g), forcing Plaintiff to file this action  
 9 to prevent restoration of the 17-Videos. Liability under § 512(f) does not require Plaintiff  
 10 to allow reinstatement to occur; it is sufficient that the Counter-Notice triggered restoration  
 11 and caused Plaintiff to incur damages to prevent it.

12 91. Attorney Rapkin cannot shield herself from liability under § 512(f) by  
 13 pleading ignorance of the law. While the "knowing" standard requires subjective bad faith,  
 14 that bad faith is evidenced here by a willful blindness to the objective facts. Rapkin certified  
 15 under penalty of perjury that the 17-Videos contained elaborate commentary throughout,  
 16 yet 8 of those videos contained zero. A total absence of the very feature being certified is  
 17 a factual lie, not a legal opinion, and no amount of copyright inexperience excuses a false  
 18 statement regarding the contents of the videos she was certifying.

19 92. As a direct result of the Defendants' material misrepresentations, Plaintiff was  
 20 forced to initiate this action to prevent YouTube from restoring the 17-Videos. Plaintiff is  
 21 entitled to recover damages, costs, and attorneys' fees under 17 U.S.C. § 512(f).

22 93. Plaintiff is further entitled to injunctive relief barring YouTube or its agents  
 23 from restoring the 17-Videos to public view.

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## **SECOND CAUSE OF ACTION**

**Declaratory Judgment, 17 U.S.C. § 512(g)(2)(C) and 28 U.S.C. § 2201  
(Against the Exposer)**

94. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 93.

95. An actual, present, and justiciable controversy exists between Plaintiff and The Exposer concerning the Exposer's unauthorized use of the 17-Videos.

96. Plaintiff contends that the Exposer's use of the 17-Videos is not protected under the doctrine of fair use, 17 U.S.C. § 107, because the videos reproduce substantial portions of Plaintiff's copyrighted works without authorization, lack meaningful transformative commentary, and function as substitutes for the original works.

97. Through counsel, Attorney Rapkin asserted in the Counter-Notice that the Exposer's use of the 17-Videos was protected by fair use and demanded reinstatement of the removed videos pursuant to 17 U.S.C. § 512(g). The Exposer has adopted and relied upon those representations.

98. The Exposer has publicly stated on multiple occasions that he intends to repost the 17-Videos to the Exposé Channel if permitted by YouTube, and has continued to assert a right to do so notwithstanding Plaintiff's objections and this pending litigation.

99. As a direct result of the Counter-Notice, YouTube initiated the statutory reinstatement process under 17 U.S.C. § 512(g), placing the 17-Videos on a restoration track and requiring Plaintiff to commence legal action to prevent their reinstatement.

100. Absent a judicial declaration resolving whether the Exposer's use of the 17-Videos is lawful, Plaintiff faces a continuing and imminent threat that the 17-Videos will be restored, reposted, or otherwise republished, causing ongoing and irreparable harm.

101. Plaintiff therefore seeks a declaration pursuant to 28 U.S.C. § 2201 and 17 U.S.C. § 512(g)(2)(C) that the Exposer's use of the 17-Videos is not authorized by 17 U.S.C. § 107 and does not constitute fair use.

102. Plaintiff further seeks injunctive relief prohibiting the Exposer from reposting,

1 publishing, or causing the restoration of the 17-Videos, and prohibiting YouTube from  
2 restoring the 17-Videos pursuant to the Counter-Notice.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, Executive Lens LLC, prays for judgment against  
5 Defendants as follows:

- 6 A. That judgment be entered in favor of Plaintiff and against Attorney Rapkin and  
7 the Exposer for monetary damages caused by their knowing material  
8 misrepresentations in the Counter-Notice pursuant to 17 U.S.C. § 512(f);
- 9 B. That the Court enter a declaratory judgment that the Exposer's use of the 17-  
10 Videos is not protected by 17 U.S.C. § 107;
- 11 C. A permanent injunction enjoining the Exposer from further use of the 17-  
12 Videos and requiring YouTube and any third-party platforms under the  
13 Exposer's control to remove the 17-Videos and prevent further dissemination  
14 as authorized by law;
- 15 D. An award of attorneys' fees and costs pursuant to 17 U.S.C. § 512(f);
- 16 E. Any other relief the Court deems just and proper.

17  
18  
19 Dated: December 30, 2025

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